

KASPER

Kentucky All Schedule Prescription Electronic Reporting



Commonwealth of Kentucky
Office of the Inspector General
Cabinet for Health and Family Services

Kentucky Revised Statutes and Kentucky Administrative Regulations

Pertaining to an

Electronic System for Monitoring Controlled Substances

(KASPER)

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KASPER Statutes and Administrative Regulation

218A.202 Electronic system for monitoring controlled substances -- Penalty for illegal use of system -- Pilot project -- Continuing education programs.

(1) The Cabinet for Health and Family Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy.

(2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.

(3) Every dispenser within the Commonwealth or any other dispenser who has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy shall report to the Cabinet for Health and Family Services the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:

(a) A drug administered directly to a patient; or

(b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.

(4) Data for each controlled substance that is dispensed shall include but not be limited to the following:

(a) Patient identifier;

(b) Drug dispensed;

(c) Date of dispensing;

(d) Quantity dispensed;

(e) Prescriber; and

(f) Dispenser.

(5) The data shall be provided in the electronic format specified by the Cabinet for Health and Family Services unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.

(6) The Cabinet for Health and Family Services shall only disclose data to persons and entities authorized to receive that data under this section. Disclosure to any other person or entity, including disclosure in the context of a civil action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited unless specifically authorized by this section. The Cabinet for Health and Family Services shall be authorized to provide data to:

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(b) A Kentucky peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal peace officer whose duty is to enforce the laws of this Commonwealth, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;

(c) A state-operated Medicaid program;

(d) A properly convened grand jury pursuant to a subpoena properly issued for the records;

- (e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient;
- (f) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:
1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing practices;
 2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or
 3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area;
- (g) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Nursing, for any advanced registered nurse practitioner who is:
1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing practices;
 2. Associated in a partnership or other business entity with an advanced registered nurse practitioner who is already under investigation by the Board of Nursing for improper prescribing practices;
 3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or
 4. In a designated geographic area for which a report on a physician or another advanced registered nurse practitioner in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or
- (h) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.
- (7) The Department for Medicaid Services may use any data or reports from the system for the purpose of identifying Medicaid recipients whose usage of controlled substances may be appropriately managed by a single outpatient pharmacy or primary care physician.
- (8) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction and only to a person or entity authorized to receive the data or the report under this section, except that:
- (a) A peace officer specified in subsection (6)(b) of this section who is authorized to receive data or a report may share that information with other peace officers specified in subsection (6)(b) of this section authorized to receive data or a report if the peace officers specified in subsection (6)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each law enforcement agency engaged in the investigation; and
 - (b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in subsection (6)(a) of this section, or with a law enforcement officer designated in subsection (6)(b) of this section; and

- (c) The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.
- (9) The Cabinet for Health and Family Services, all peace officers specified in subsection (6)(b) of this section, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.
- (10) The data and any report obtained therefrom shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.
- (11) Intentional failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.
- (12) Intentional disclosure of transmitted data to a person not authorized by subsection (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13) The Commonwealth Office of Technology, in consultation with the Cabinet for Health and Family Services, shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall:
- (a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and
 - (b) Study the use of an interactive system that includes a relational data base with query capability.
- (14) Provisions in this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13) of this section.
- (15) The Cabinet for Health and Family Services may limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.
- (16) (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.
- (b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.
- (c) The cabinet shall work with the Justice and Public Safety Cabinet for the development of a continuing education program for law enforcement officers about the purposes and users of the electronic system for monitoring established in this section.

Effective: June 26, 2007

History: Amended 2007 Ky. Acts ch. 85, sec. 252, effective June 26, 2007; and ch. 124, sec. 4, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 5, sec. 5, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 627, effective June 20, 2005; and ch. 99, sec. 543, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 68, sec. 1, effective July 13, 2004; and ch. 107, sec. 1, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 295, sec. 1, effective April 9, 2002. -- Created 1998 Ky. Acts ch. 301, sec. 13, effective July 15, 1998.

Legislative Research Commission Note (6/26/2007). This section was amended by 2007 Ky. Acts chs. 85 and 124, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (7/13/2004). This section was amended by 2004 Ky. Acts. chs. 68 and 107. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts. ch. 107, which was last enacted by the General Assembly, prevails under KRS 446.250.

218A.240 Controlled substances -- Duties and authority of state and local officers, Cabinet for Health and Family Services, and Kentucky Board of Pharmacy -- Civil proceedings -- Identification of trends.

(1) All police officers and deputy sheriffs directly employed full-time by state, county, city, urban-county, or consolidated local governments, the Department of Kentucky State Police, the Cabinet for Health and Family Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

(2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health and Family Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths; to enter upon premises at all times for the purpose of making inspections; to seize evidence; to interrogate all persons; to require the production of prescriptions, of books, papers, documents, or other evidence; to employ special investigators; and to expend funds for the purpose of obtaining evidence and to use data obtained under KRS 218A.202(7) in any administrative proceeding before the cabinet.

(3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health and Family Services.

(4) Designated agents of the Cabinet for Health and Family Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.

(5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.

(a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.

(b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.

(c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his or her costs, including a reasonable attorney's fee.

(d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.420, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his or her percentage of the funds shall go to the agency initiating the forfeiture action.

(6) The Cabinet for Health and Family Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.

- (7) (a) The Cabinet for Health and Family Services shall use the data compiled in the electronic system created in KRS 218A.202 for investigations, research, statistical analysis, and educational purposes and shall proactively identify trends in controlled substance usage and other potential problem areas. Only cabinet personnel who have undergone training for the electronic system and who have been approved to use the system shall be authorized access to the data and reports under this subsection. The cabinet shall notify a board responsible for the licensure, regulation, or discipline of each practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances, if a report or analysis conducted under this subsection indicates that further investigation about inappropriate or unlawful prescribing or dispensing may be necessary by the board.
- (b) The cabinet shall develop criteria, in collaboration with the Board of Medical Licensure and the Board of Pharmacy, to be used to generate trend reports from the data obtained by the system. Meetings at which the criteria are developed shall be meetings, as defined in KRS 61.805, that comply with the open meetings laws, KRS 61.805 to 61.850.
- (c) The cabinet shall, on a quarterly basis, publish trend reports from the data obtained by the system.
- (d) Peace officers authorized to receive data under KRS 218A.202 may request trend reports not specifically published pursuant to paragraph (c) of this subsection. A report under this paragraph may be based upon the criteria developed under paragraph (b) of this subsection or upon any of the data collected pursuant to KRS 218A.202(4), except that the report shall not identify an individual prescriber, dispenser, or patient.
- (e) No trend report generated under this subsection shall identify an individual prescriber, dispenser, or patient.

Effective: June 26, 2007

History: Amended 2007 Ky. Acts ch. 85, sec. 253, effective June 26, 2007; and ch. 124, sec. 14, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 99, sec. 546, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 68, sec. 2, effective July 13, 2004; and ch. 107, sec. 2, effective July 13, 2004. -- Amended 1998 Ky. Acts ch. 301, sec. 26, effective July 15, 1998; and ch. 426, sec. 487, effective July 15, 1988. -- Amended 1992 Ky. Acts ch. 441, sec. 28, effective July 14, 1992. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(3). -- Created 1972 Ky. Acts ch. 226, sec. 26.

Legislative Research Commission Note (6/26/2007). This section was amended by 2007 Ky. Acts chs. 85 and 124, which do not appear to be in conflict and have been codified together.

218A.245 Reciprocal agreements with other states to share prescription drug monitoring information.

(1) The secretary of the Cabinet for Health and Family Services may enter into reciprocal agreements with any other state or states of the United States to share prescription drug monitoring information if the other state's prescription drug monitoring program is compatible with the program in Kentucky. If the secretary elects to evaluate the prescription drug monitoring program of another state as authorized by this section, priority shall be given to a state that is contiguous with the borders of the Commonwealth.

(2) In determining compatibility, the secretary shall consider:

- (a) The essential purposes of the program and the success of the program in fulfilling those purposes;
- (b) The safeguards for privacy of patient records and its success in protecting patient privacy;
- (c) The persons authorized to view the data collected by the program;
- (d) The schedules of controlled substances monitored;
- (e) The data required to be submitted on each prescription;
- (f) Any implementation criteria deemed essential for a thorough comparison; and
- (g) The costs and benefits to the Commonwealth in mutually sharing particular information available in the Commonwealth's database with the program under consideration.

(3) The secretary shall review any agreement on an annual basis to determine its continued compatibility with the Kentucky prescription drug monitoring program.

(4) The secretary shall prepare an annual report to the Governor and the Legislative Research Commission that summarizes any agreement under this section and that analyzes the effectiveness of that agreement in monitoring the dispensing of controlled substances in the Commonwealth.

(5) Any agreement between the cabinet and another state shall prohibit the sharing of information about a Kentucky resident, practitioner, pharmacist, or other prescriber for any purpose not otherwise authorized by this section or KRS 218A.202.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 99, sec. 547, effective June 20, 2005. -- Created 2004 Ky. Acts ch. 107, sec. 3, effective July 13, 2004.

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: KRS 218A.010(9), 218A.202, 218A.240

STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. The purpose of this administrative regulation is to establish criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who:

- (a) 1. Is directly employed by the Cabinet for Health and Family Services; or
2. Is employed by an agent or contractor of the cabinet;
- (b) Has undergone KASPER training; and
- (c) Has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(9).

(4) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(5) "Patient identifier" means a patient's:

- (a) Full name;
- (b) Address, including zip code;
- (c) Date of birth; and
- (d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(6) "KASPER Reporting Form" means a form that:

- (a) Is in the format of the "KASPER Reporting Form" incorporated by reference in Section 7 of this administrative regulation; and
- (b) Contains the information specified by Section 2(2) of this administrative regulation.

(7) "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

Section 2. Data Reporting. (1) A dispenser shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) and (b).

(2) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

- (a) Patient identifier;
- (b) National drug code of the drug dispensed;
- (c) Metric quantity of drug dispensed;
- (d) Date of dispensing;
- (e) Estimated day's supply dispensed;
- (f) Drug Enforcement Administration registration number of the prescriber;
- (g) Serial number assigned by the dispenser; and
- (h) The Drug Enforcement Administration registration number of the dispenser.

(3) The data identified in subsection (2) of this section shall be transmitted within seven (7) days of the date of dispensing unless the cabinet grants an extension.

(4) (a) An extension may be granted if:

1. The dispenser suffers a mechanical or electronic failure; or
2. The dispenser cannot meet the deadline established by subsection (3) of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(5) An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6) Except as provided in subsection (9) of this section, the data shall be transmitted by:

- (a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;
- (b) Double sided, high density micro floppy disk;
- (c) One-half (1/2) inch nine (9) track 1600 or 6250 BPI magnetic tape;
- (d) Secure File Transfer Protocol;
- (e) https protocol;
- (f) CD/DVD; or
- (g) Secure Virtual Private Network connection.

(7) The data shall be transmitted in the format established by the "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, May 1995, or a comparable format approved by the branch.

(8) A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the format established by "ASAP Telecommunications Format for Controlled Substances", shall be granted a waiver from the electronic reporting requirement if the dispenser:

- (a) Makes a written request to the branch within twenty-four (24) hours of discovery and of the circumstances necessitating the request, or on the next date that state offices are open for business following the discovery; and
- (b) Agrees in writing to immediately begin reporting the data by submitting a completed "KASPER Reporting Form" or comparable document approved in writing by the branch.

Section 3. Compliance. A dispenser may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER report shall be made electronically at "<http://chfs.ky.gov/oig/kasper>".

(3) A request for a KASPER report shall be made by written application on one (1) of the following forms:

- (a) For law enforcement, on the "Request for Law Enforcement KASPER Report", Form DCB-15L;
- (b) For judiciary, on the "Request for KASPER Report (Court)", Form DCB-15J; or
- (c) For pharmacy, on the "Request for KASPER Report", Form DCB-15P.

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the Social Security number, driver's license number, or the number "000-00-0000", as applicable, of the parent or guardian shall be used.

(5) If a patient is an animal, the owner's Social Security number, driver's license number, or the number "000-00-0000", as applicable, shall be used.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall be authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, May, 1995;

(b) "KASPER Reporting Form", July 2008;

(c) "Request for Law Enforcement KASPER Report", Form DCB-15L, 5/06;

(d) "Request for KASPER Report (Court)", Form DCB-15J, 5/06; and

(e) "Request for KASPER Report", Form DCB-15P, 5/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and may be viewed online at <http://chfs.ky.gov/oig/KASPER.htm>. (25 Ky.R. 966; Am. 1367; eff. 12-16-98; 32 Ky.R. 1927; 33 Ky.R. 120; eff. 7-24-06; 34 Ky.R. 2609; 35 Ky.R. 283; eff. 9-5-08; 2615; eff. 7-31-2009.)